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U.S. DISTRICT COURT E.D.N.Y.

★ FEB 02 2012 ★

BROOKLYN OFFICE

**MEMORANDUM**  
**TO THE HONORABLE JACK B. WEINSTEIN**  
**SENIOR U.S. DISTRICT COURT JUDGE**

*Set for my ASAP. At  
appears by telephone*

**RE: BRANCATO, JEROME**  
**DOCKET #: 08-CR-76-03**  
**RESPONSE TO EARLY TERMINATION**  
**PETITION**

Reference is made to the above-captioned offender who was sentenced by Your Honor on April 17, 2009 to fifteen (15) months custody, three years supervised release and a \$100 special assessment fee on the charge of Extortion Conspiracy, in violation of 18 USC 1951(a). This memorandum shall serve to provide a formal position regarding the offender's petition for early termination.

In summary, the offender filed a petition on September 8, 2011 requesting to be released from his term of supervised release, pursuant to 18 USC 3583(e)(1), sooner than his scheduled expiration date of September 2, 2013. This petition was filed in order to allow the offender to freely travel throughout the United States and Canada. His request was further predicated on his age (83 years old), medical conditions (self-report of heart and knee problems), and the need to assist his son with the rearing of his grandchildren in New Jersey. It is noted that the offender's supervision was transferred to the District of New Jersey (DNJ) in December, 2010 based on his residence being located within their geographical confines.

The Eastern District of New York (EDNY) Probation Department consulted with the assigned supervision officer in the DNJ, Senior U.S. Probation Officer (USPO) Nancy Hildner, for her position regarding the petition. Based on the offender's reasons cited in the petition, namely: age, health issues, and family needs, Sr. USPO Hildner expressed no opposition to early termination. Further, she indicated that the offender has remained cooperative in all aspects of his supervision requirements. Conversely however, Sr. USPO Robert Anton, who supervised the offender in the EDNY commencing in 2002 on his first federal conviction up until the transfer of supervision to the DNJ in December, 2010 on the current case, expressed opposition to the early termination request. Specifically, Sr. USPO Anton's position was based on the offender's criminal and violative history during other periods of supervised release.

By way of history, the offender was originally sentenced on May 8, 2002 in the EDNY by The Honorable I. Leo Glasser on the charge of Conspiracy to Defraud the United States and was sentenced to thirty-six (36) months probation. Soon thereafter, the offender was arrested on June 4, 2002, on charges of Racketeering Acts Involving Extortion and Illegal Gambling. He was convicted on four (4) counts by jury verdict in March, 2003 before the Honorable Frederic Block and sentenced on September 9, 2004 to twenty-four months (24) months custody followed by three (3) years supervised release, a special assessment fee of \$1600 and restitution in the amount of \$1,070,136 (under Docket # 02-CR-606-05). Given that the underlying conduct overlapped the probationary period by approximately 2-3 weeks, a violation was initiated by the Probation Department. Ultimately, in May, 2006, the Probation Department withdrew the violation as it was determined by the U.S. Attorney's Office that the substantive conduct resulting in the June, 2002 arrest, did not occur during the initial/brief period of probation commencing that May. The offender commenced his second period of supervision on October 2, 2006 in the EDNY which eventually resulted in the second violation to be initiated by Probation in September, 2008 by way of his arrest in February, 2008 on charges of Extortion and Extortion Conspiracy. At the time of that arrest, the offender was 80 years old. (It is noted that Your Honor agreed on August 21, 2008, to consolidate the 02-CR-606-05 violation under Judge Block with the current case under Docket 08-CR-76-03, in an effort to conserve judicial resources). On April 17, 2009, Your Honor sentenced the offender to fifteen (15) months custody followed by three (3) years supervised release on the new criminal charges. As per the pending violation, the Court adjourned same sine die given the custodial sentence and ensuing

period of supervised release, for which he is presently serving. On May 6, 2009, Your Honor dismissed this violation given the reasons for the adjournment and in the interest of closing an outstanding matter.

Predicated on the above, the Probation Department for the EDNY contends that given the offender's three (3) federal convictions for criminal activities associated with the Gambino Crime Family, two (2) of which transpired during periods of supervision, early termination is not warranted. The U.S. Attorney's Office, specifically Assistant U.S. Attorney Evan Norris, supports the EDNY's position. Further, it is noted that the offender has significant outstanding financial obligations owed to the government as follows: Docket # 08-CR-76-03 reflects a \$550 balance and Docket # 02-CR-606-05 reflects a \$1,062,320.26 balance; according to the Financial Litigation Unit's records, the offender has been making consistent payments of \$25 per month towards these restitution obligations.

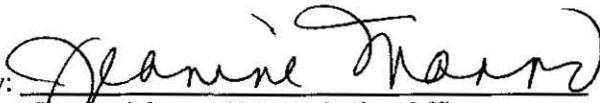
In rendering a decision regarding the request for early termination of supervised release, the Court may consider the following: according to Title 18 U.S.C. § 3583 (e)(1), the Court may terminate a term of supervised release in felony cases after one year of supervision, if satisfied that such action is warranted by the conduct of the offender and is in the interest of justice. The Second Circuit has ruled that an offender's behavior must be "exceptionally good" to warrant the benefit of early termination. The Court may also take no action and permit the offender to terminate supervised release as scheduled, on September 2, 2013.

We await Your Honor's decision on this matter.

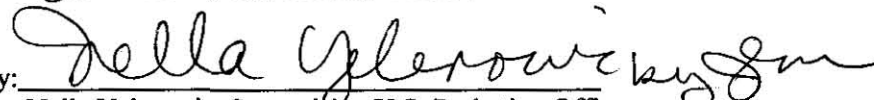
RESPECTFULLY SUBMITTED:

EILEEN KELLY  
CHIEF U.S. PROBATION OFFICER

Prepared by:

  
Jeanine Manno, U.S. Probation Officer

Approved by:

  
Nella Yelenovic, Supervising U.S. Probation Officer

Date: November 15, 2011

cc: Nancy Hildner, U.S. Probation Officer, DNJ  
Assistant U.S. Attorney Evan Norris  
Jerome Brancato

THE COURT ORDERS:

- ☐ Immediate Early Termination of Supervised Release
- ☐ No Action
- ☐ Other

\_\_\_\_\_  
Signature of Judicial Officer

\_\_\_\_\_  
Date